



COMMONWEALTH of VIRGINIA

DEPARTMENT OF ENVIRONMENTAL QUALITY

TIDEWATER REGIONAL OFFICE

Molly Joseph Ward
Secretary of Natural Resources

5636 Southern Boulevard, Virginia Beach, Virginia 23462
(757) 518-2000 Fax (757) 518-2103
www.deq.virginia.gov

David K. Paylor
Director

Maria R. Nold
Regional Director

STATE WATER CONTROL BOARD ENFORCEMENT ACTION ENFORCEMENT ORDER - ORDER BY CONSENT ISSUED TO TAI Oak Hall LLC VPDES Permit No. VA0090875

SECTION A: Purpose

This is a Consent Order issued under the authority of Va. Code §62.1-44.15 between the State Water Control Board and TAI Oak Hall LLC for the purpose of resolving certain violations of the State Water Control Law and the applicable permit and regulation.

SECTION B: Definitions

Unless the context clearly indicates otherwise, the following words and terms have the meaning assigned to them below:

1. "305(b) report" means the report required by Section 305(b) of the Clean Water Act (33 United States Code § 1315(b)), and Va. Code § 62.1-44.19:5 for providing Congress and the public an accurate and comprehensive assessment of the quality of State surface waters.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
4. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia, as described in Va. Code § 10.1-1183.
5. "Director" means the Director of the Department of Environmental Quality, as described in Va. Code § 10.1-1185.
6. "Discharge" means discharge of a pollutant. 9 VAC 25-31-10.

7. “Discharge of a pollutant” when used with reference to the requirements of the VPDES permit program means:
 - a. Any addition of any pollutant or combination of pollutants to surface waters from any point source; or
 - b. Any addition of any pollutant or combination of pollutants to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft which is being used as a means of transportation.
8. “DMR” means Discharge Monitoring Report.
9. “Effluent” means wastewater – treated or untreated – that flows out of a treatment plant, sewer, or industrial outfall.
10. “Facility” or “WWTP” means the Wastewater Treatment Plant located at the Oak Hall Shopping in Oak Hall, Virginia, which treats and discharges treated domestic waste water with industrial contribution, for the tenants of Oak Hall Shopping Center.
11. “Oak Hall” means TAI Oak Hall LLC, a limited liability company authorized to do business in Virginia and its members, affiliates, partners, and subsidiaries. Oak Hall is a “person” within the meaning of Va. Code § 62.1-44.3.
12. “Notice of Violation” or “NOV” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.
13. “Order” means this document, also known as a “Consent Order” or “Order by Consent,” a type of Special Order under the State Water Control Law.
14. “Permit” means VPDES Permit No. VA0090875, which was issued under the State Water Control Law and the Regulation to Oak Hall on December 1, 2011, and which expires November 30, 2016.
15. “Pollutant” means dredged spoil, solid waste, incinerator residue, filter backwash, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials (except those regulated under the Atomic Energy Act of 1954, as amended (42 USC § 2011 *et seq.*)), heat, wrecked or discarded equipment, rock, sand, cellar dirt and industrial, municipal, and agricultural waste discharged into water... 9 VAC 25-31-10.
16. “Pollution” means such alteration of the physical, chemical, or biological properties of any state waters as will or is likely to create a nuisance or render such waters (a) harmful or detrimental or injurious to the public health, safety, or welfare or to the health of animals, fish, or aquatic life; (b) unsuitable with

reasonable treatment for use as present or possible future sources of public water supply; or (c) unsuitable for recreational, commercial, industrial, agricultural, or other reasonable uses, provided that (i) an alteration of the physical, chemical, or biological property of state waters or a discharge or deposit of sewage, industrial wastes or other wastes to state waters by any owner which by itself is not sufficient to cause pollution but which, in combination with such alteration of or discharge or deposit to state waters by other owners, is sufficient to cause pollution; (ii) the discharge of untreated sewage by any owner into state waters; and (iii) contributing to the contravention of standards of water quality duly established by the Board, are “pollution.” Va. Code § 62.1-44.3.

17. “Regulation” means the VPDES Permit Regulation, 9 VAC 25-31-10 *et seq.*
18. “State Water Control Law” means Chapter 3.1 (§ 62.1-44.2 *et seq.*) of Title 62.1 of the Va. Code.
19. “State Waters” means all water, on the surface and under the ground, wholly or partially within or bordering the Commonwealth or within its jurisdiction, including wetlands. Va. Code § 62.1-44.3.
20. “TRO” means the Tidewater Regional Office of DEQ, located in Virginia Beach, Virginia.
21. “Va. Code” means the Code of Virginia (1950), as amended.
22. “VAC” means Virginia Administrative Code.
23. “VPDES” means Virginia Pollutant Discharge Elimination System.
24. “Warning Letter” or “WL” means a type of Notice of Alleged Violation under Va. Code § 62.1-44.15.

SECTION C: Findings of Fact and Conclusions of Law

1. Oak Hall owns and operates the Facility located at the southeast corner of US Highway 13 at Route 175 in Oak Hall, Virginia.
2. The Permit allows Oak Hall to discharge treated municipal waste water with industrial contribution from the Facility to an unnamed tributary of Tunnels Mill Branch to Bulbegger Creek, in strict compliance with the terms and conditions of the Permit.
3. Bulbegger Creek is located in the Chesapeake Bay Basin. Bulbegger Creek is listed in DEQ’s 305(b) report as impaired for aquatic life and open-water aquatic life based on low dissolved oxygen concentrations, for fish consumption based on

PCBs in fish tissue and for recreation use due to exceedance of the enterococcus bacteria criteria.

4. Part I.A of the Permit requires Oak Hall to submit DMRs monthly for discharges from the Facility to State waters.
5. In submitting its DMRs for the months of May 2013 to May 2014, Oak Hall indicated that it exceeded discharge limitations for Carbonaceous Biochemical Oxygen Demand ("CBOD5"), E.coli bacteria, Total Kjeldahl Nitrogen ("TKN"), Total Suspended Solids ("TSS") and fecal coliform bacteria.
6. TRO issued Warning Letters and Notices of Violation for the exceedances described in paragraph C(5) as follows: Warning Letters Nos. W2013-07-T-1001 (dated July 2, 2013), W2013-08-T-1004 (dated August 2, 2013) and W2013-09-T-1004 (dated September 9, 2013), and Notices of Violation Nos. W2013-10-T-0001 (dated October 1, 2013), W2013-11-T-0001 (dated November 12, 2013), W2013-12-T-0001 (dated December 4, 2013), W2014-01-T-0001 (dated January 9, 2014), W2014-03-T-0001 (dated March 19, 2014), W2014-04-T-0001 (dated April 2, 2014), W2014-06-T-0001 (dated June 11, 2014) and W2014-07-T-0001 (dated July 8, 2014).
7. Oak Hall responded to each of the Warning Letters and Notices of Violation. Oak Hall attributed the discharge limitation exceedances to the death of the previous operator who had been operating the Facility for many years, the failure of several process pumps, random loss of bioclere media growth, failure of the sand filter, insufficient dissolved oxygen ("DO") in aeration and post aeration, inhibition of nitrifying bacteria, cold weather, organic overloading and/or hydraulic overloading.
8. Oak Hall has implemented several corrective actions including the replacement of pumps and filters, distribution of pretreatment surveys to tenants of the Facility, composite sampling of user influents, installation of air relief valves to stop the filter dosing pump from tripping, installation of a dump valve to reduce flow rate and increase retention time, installation of a recirculation line, installation of a chemical feed pump to add Aluminum Polychloride, upgrading the breaker controlling the filter dose feed pumps, pressure cleaning the filter, increasing the filter air lift pressure and other system modifications.
9. Oak Hall's operating logs indicate that it discharged treated wastewater from the Plant every day from May 1, 2013 to May 31, 2014.
10. Va. Code § 62.1-44.5 states that: "[E]xcept in compliance with a certificate issued by the Board, it shall be unlawful for any person to discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances

11. The Regulation, at 9 VAC 25-31-50, also states that except in compliance with a VPDES permit, or another permit issued by the Board, it is unlawful to discharge into state waters sewage, industrial wastes or other wastes.
12. Va. Code § 62.1-44.15(5a) states that a VPDES permit is a "certificate" under the statute.
13. The Department has issued no permits or certificates to Oak Hall other than VPDES Permit No. VA0090875.
14. Bulbegger Creek is a surface water located wholly within the Commonwealth and is a "state water" under State Water Control Law.
15. Based on the results of DMRs and accompanying documentation submitted by Oak Hall to DEQ for the months of May 2013 to April 2014, and Oak Hall's responses to the Warning Letters and NOV's, the Board concludes that Oak Hall has violated Part 1.A.1 of the Permit, Va. Code §62.1-44.5 and 9 VAC 25-31-50, by discharging treated sewage and municipal wastes from the Plant while concurrently failing to comply with the conditions of the Permit, as described in paragraphs C(3) through C(6), above.
16. In order for Oak Hall to complete its return to compliance, DEQ staff and Oak Hall have agreed to the Schedule of Compliance, which is incorporated as Appendix A of this Order.

SECTION D: Agreement and Order

Accordingly, by virtue of the authority granted it in Va. Code §§ 62.1-44.15, the Board orders Oak Hall, and Oak Hall agrees to:

1. Perform the actions described in Appendix A of this Order; and
2. Pay a civil charge of \$5,733.00 within 30 days of the effective date of this Order in settlement of the violations cited in this Order.

Payment shall be made by check, certified check, money order or cashier's check payable to the "Treasurer of Virginia," and shall be delivered to:

Receipts Control
Department of Environmental Quality
Post Office Box 1104
Richmond, Virginia 23218

Oak Hall shall include its Federal Employer Identification Number (FEIN) with the civil charge payment **and** shall indicate that the payment is being made in accordance with the requirements of this Order for deposit into the Virginia Environmental Emergency Response Fund (VEERF).

If the Department has to refer collection of moneys due under this Order to the Department of Law, Oak Hall shall be liable for attorneys' fees of 30% of the amount outstanding.

SECTION E: Administrative Provisions

1. The Board may modify, rewrite, or amend the Order with the consent of Oak Hall, for good cause shown by Oak Hall, or on its own motion pursuant to the Administrative Process Act, Va. Code § 2.2-4000 *et seq.*, after notice and opportunity to be heard.
2. This Order addresses and resolves only those violations specifically identified in Section C of this Order. This Order shall not preclude the Board or the Director from taking any action authorized by law, including but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility; or (3) taking subsequent action to enforce the Order.
3. For the purposes of this Order and subsequent actions with respect to this Order only, Oak Hall admits the jurisdictional allegations, findings of fact, and conclusions of law contained herein.
4. Oak Hall consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. Oak Hall declares it has received fair and due process under the Administrative Process Act and the State Water Control Law and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to any judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to modify, rewrite, amend, or enforce this Order.
6. Failure by Oak Hall to comply with any of the terms of this Order shall constitute a violation of an order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state, or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. Oak Hall shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other acts of God, war, strike, or such other occurrence. Oak Hall shall show that such circumstances were beyond its control and not due to a lack of

good faith or diligence on its part. Oak Hall shall notify the DEQ Regional Director verbally within 24 hours and in writing within three business days when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of the Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of any such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.


Failure to so notify the Regional Director verbally within 24 hours and in writing within three business days, of learning of any condition above, which Oak Hall intends to assert will result in the impossibility of compliance, shall constitute a waiver of any claim to inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees and assigns, jointly and severally.
10. This Order shall become effective upon execution by both the Director or his designee and Oak Hall. Nevertheless, Oak Hall agrees to be bound by any compliance date which precedes the effective date of this Order.
11. This Order shall continue in effect until:
 - a. The Director or his designee terminates the Order after Oak Hall has completed all of the requirements of the Order;
 - b. Oak Hall petitions the Director or his designee to terminate the Order after it has completed all of the requirements of the Order and the Director or his designee approves the termination of the Order; or
 - c. the Director or Board terminates the Order in his or its sole discretion upon 30 days' written notice to Oak Hall.

Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve Oak Hall from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.

12. Any plans, reports, schedules or specifications attached hereto or submitted by Oak Hall and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
13. The undersigned representative of Oak Hall certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind Oak Hall to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of Oak Hall.
14. This Order constitutes the entire agreement and understanding of the parties concerning settlement of the violations identified in Section C of this Order, and there are no representations, warranties, covenants, terms or conditions agreed upon between the parties other than those expressed in this Order.
15. By its signature below, Oak Hall voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 23 day of October, 2014.



Regional Director
Department of Environmental Quality

TAI Oak Hall LLC voluntarily agrees to the issuance of this Order.

Date: 8/22/14 By: [Signature], VP
(Person) (Title)
TAI Oak Hall LLC

State of Ohio
~~Commonwealth of Virginia~~
City/County of Hancock

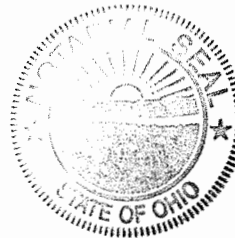
The foregoing document was signed and acknowledged before me this 22nd day of August, 2014, by James C. Koehler II DDA James C. Koehler who is a member of TAI Oak Hall LLC on behalf of the company.

[Signature]
Notary Public

Registration No.

My commission expires: 6-9-2019

Notary seal:



ANNETTE KERR
Notary Public
In and for the State of Ohio
My Commission Expires
6-9-2019

APPENDIX A SCHEDULE OF COMPLIANCE

Oak Hall shall:

1. By November 31, 2014, install sample points for Oak Hall tenants that are not currently monitored. Beginning December 10, 2014, Oak Hall shall conduct monthly monitoring of the sample points.
2. By February 28, 2015, complete an engineering study of nitrification improvements.
3. By December 31, 2015, complete system improvements so that the Facility consistently meets the Permit effluent limitations.
4. Beginning September 10, 2014, Oak Hall shall submit monthly progress reports to DEQ by the 10th of each month respectively. The monthly progress reports shall include the status of any upgrades or modifications to the system, all maintenance performed on the Facility during the preceeding month period, changes in Facility operations and Oak Hall's compliance with the Permit.
5. Mail all submittals and reports required by this Appendix A to:

Regional Director
DEQ, Tidewater Regional Office
5636 Southern Blvd.
Virginia Beach, VA 23462